

## **ATTACHMENT II**

### **UPGRADING IMPLEMENTATION OF THE FINANCIAL ASSURANCE PROGRAM**

In addition to consideration of rulemakings, EPA has been pursuing a range of efforts to upgrade implementation of the RCRA financial assurance program. The Agency plans to continue these efforts over the next year and beyond. Some of the key near-term action items include:

- Begin updating the CostPro cost estimating model;
- On a pilot basis, provide expert contractor assistance to Regions and States for review of financial assurance submissions;
- Enter into a dialogue with States and the regulated community on policy issues related to financial assurance for corrective action;
- Advance policy development in the area of financial assurance for post-closure care beyond the initial 30 year period;
- Issue guidance materials (e.g., memorandum on the importance of review of cost estimates and instruments, guidance on managing financial assurance documentation, and memorandum on incorporating financial assurance into oversight activities).

These and other activities, developed in consultation with the States, are discussed in detail below. Information and ideas from some of these activities will likely provide input into current and potential future rulemaking considerations as well.

In developing guidance and other activities in this plan, we will follow the Inspector General's advice that we take advantage of successful guidance, checklists and approaches already used by Regions and States. This document lays out schedules for activities planned in FY 2007 and FY 2008; however, it may need to be adjusted during development of the FY 2007 operating plan, depending on available resources. Schedules and timing may also be further adjusted upon advice of the States.

#### **I. Identification and Development of New Guidance or Policy**

During the past several years, EPA has worked with States to identify areas related to financial assurance where additional guidance or policy is needed. We have efforts underway in some of these areas, and will continue over the next year to modify existing guidance and issue new guidance as described below. We will work closely with States and provide an opportunity for comment and discussion with non-governmental stakeholders during the development of these materials to ensure they provide the appropriate level of information needed to effectively implement the RCRA financial assurance requirements.

We anticipate making each of these documents available online via links from the Financial Assurance QuickPlace we established earlier this year, as well as from the

Toolkit we anticipate putting in place (*see* Section II “Improving Communications, Training, Oversight/Assistance, and Data Management” for a description of these communication tools).

A. Updating CostPro (Beginning in FY 2007).

Adequate cost estimates are a key component of the financial assurance program. As EPA developed this strategy, we have learned that many States found the CostPro software to be very useful, but that the current version has become difficult to use as operating systems have been upgraded to versions that are incompatible with the programming of CostPro. Updating this software is a key activity for OSW in the next fiscal year, and our efforts will start at the beginning of FY 2007. This will add to the available cost estimating tools that implementers use, including state developed tools such as the State of Washington’s cost estimation spreadsheets.

B. Memorandum Stressing the Importance of Cost Estimate Reviews (First Quarter, FY 2007).

EPA is working with the States to develop a memorandum stressing the importance of conducting a thorough review of cost estimates for closure, post-closure, corrective action, and of financial assurance instruments, as part of new permit actions and permit renewals. The memorandum in final form will be distributed during the first quarter, FY 2007.

C. Guidance on Managing Financial Assurance Documentation (Third Quarter, FY 2007).

EPA is working with States to develop guidance on maintaining financial assurance files and managing attendant financial assurance information. The guidance will include example approaches (e.g. checklists) to help States maintain their files in a way that basic information they need is readily available. We distributed to the Regions in April 2006, a draft discussion paper on information and file management. We will solicit comments from the Regions, as well as the States, and anticipate developing draft materials based on their input by the third quarter, FY 2007.

D. Memorandum to Regions on Programmatic Oversight of Financial Assurance (Second Quarter, FY 2007).

The Agency is developing guidance on incorporating financial assurance into program oversight activities. We will collaborate with States to assess elements appropriate for inclusion in this memorandum. We expect to complete the guidance by the second quarter of FY 2007.

E. Publish a Series of Fact Sheets on Financial Assurance Instruments (FY 2007/2008)

EPA is in the process of developing summary fact sheets on the use of each instrument. The fact sheets include instructions on accessing funds from the instruments (e.g., how to call in a letter of credit). These fact sheets will be developed in FY 2007/2008.

F. Publish a “Top Ten” Tips Guide for Regulators (FY 2007/2008)

Building on the information we have heard during training classes and through other interactions with the States over the past year, the Agency will work with program implementers to identify useful implementation tips they have learned based on their experiences in the financial assurance program. Topics for the guide include file management procedures, ensuring proper documentation is received from the facility and keeping up to date on the company’s financial status.

We will compile these into a shared practices guide so others may benefit from the lessons learned. We will share a draft of the guide with program implementers and solicit input on which tips/lessons they find most useful. This guide will be developed in FY 2007/2008.

G. Update Existing Guidance (FY 2008)

The Agency has launched an effort to update the 1982 Financial Assurance for Closure and Post Closure Guidance Manual, which is the most comprehensive guidance on the financial assurance program. The 1982 document has been a key reference for financial assurance reviewers.

Offering an updated comprehensive guidance manual as an alternative format to the individual fact sheets or topic-specific Toolkit materials will be useful for newer staff. The guidance will be available in FY 2008.

H. Policy Development on Financial Assurance for Corrective Action.

While the Agency issued guidance on Financial Assurance for Corrective Action in September 2003, we recognize that Regions and States can face difficult problems in imposing financial assurance for corrective action. Cost estimating and the timing of financial assurance requirements have been identified as issues. We are currently working with the States on specific issues, and have entered into a dialogue with industry to discuss issues and concerns. In addition, we will convene a workgroup during FY 2007, which will include representatives from the Regions and States, to address issues related to financial assurance for corrective action.

Through this workgroup, we will work through those issues and identify areas where we need to develop new guidance (or enhance our existing guidance). If during this process, information arises indicating that the current regulations may not be adequate, we will assess whether regulatory changes in this area are needed.

We also will continue to look to the Superfund program to help us identify approaches adopted by that program that RCRA program implementers might adopt. (*See* discussion of “New Workgroups” in Section II.A below.)

I. Policy Development on Financial Assurance for Long-Term Care and Post-Closure.

There are financial assurance challenges associated with extending the post-closure care period beyond 30 years under the current regulations in Parts 264 and 265, Subpart H. For example, questions arise regarding how to revise cost estimates to cover activities that may extend for prolonged periods of time, whether there are particular procedures that should be followed if these costs are assured by third-party mechanisms, and how to ensure that a financial assurance mechanism will continue to be available to cover the costs of long-term activities. (These same issues, or similar issues, arise for long-term post-remedial financial assurance for RCRA corrective actions, although the regulations provide more flexibility for corrective action.) During FY 2007, we will convene a workgroup, which will include representatives from the Regions and States, to address issues related to financial assurance for long-term post-closure care. (*See* discussion of “New Workgroups” in Section II.A below.)

II. **Improving Communications, Training, Oversight/Assistance, and Data Management**

We have been pursuing many improvements and will continue over the next year to upgrade implementation of the financial assurance requirements. Four areas are associated with the implementation of the financial assurance program: communication, training, oversight/assistance, and data management (RCRAInfo enhancements). We have efforts ongoing in each of these areas, as described below.

A. Communication.

- Existing EPA/State Groups.

Standing workgroups are used to facilitate two-way exchange of information. These workgroups and their call schedules include:

***EPA/State Financial Assurance Bi-Monthly Calls.*** Bi-monthly conference calls are held between EPA HQ (which includes OECA and OSWER representatives) and the Regions. These calls discuss a wide range of issues, such as cost estimating, that arise during implementation of the regulations and provide a forum for addressing issues across the program. States are included in every other call and provide their perspective as implementers.

***Association of State and Territorial Solid Waste Management Officials (ASTSWMO).*** EPA continues to coordinate with the ASTSWMO key contact for financial assurance to determine how to best utilize the States' expertise and maintain effective two-way lines of communication with respect to financial assurance issues. In addition, we will continue to participate in ASTSWMO meetings to carry on our dialogue with the States on financial assurance.

***RCRA Permit Writers.*** Monthly conference calls are held with EPA and State permit writers on topics of concern, including financial assurance issues.

***RCRA Corrective Action.*** Monthly conference calls are held with EPA and State corrective action staff, and as needed. EPA expects to increase the use of these calls as a forum to discuss financial assurance for corrective action.

- **New Workgroups.**

As discussed in Section I, EPA will establish two workgroups to address concerns and issues associated with financial assurance. One workgroup will look at issues related to financial assurance for long-term post-closure care; the second will look at issues related to financial assurance for corrective action. These workgroups will include representatives from the Regions and States. Through these workgroups, the Agency will identify issues and information gaps, identify successful approaches, work toward the resolution of issues, and make recommendations regarding both program direction and the need for additional guidance or other tools to assist program implementers. If during this process, information arises indicating that the current regulations may not be adequate, we will assess whether regulatory changes in these areas are needed.

- **External Discussions.**

***Environmental Financial Advisory Board (EFAB).*** EPA has raised several financial assurance issues with EFAB. EFAB's membership

includes experts from all levels of government, the finance and banking communities, business and industry, and national organizations. The Board's semi-annual meetings, additional topic-specific workshops, and recommendations provide EPA information on financial assurance.

***Industry Trade Groups.*** EPA continues to coordinate with trade groups, such as: the Environmental Technology Council (ETC); the American Chemistry Council (ACC); and the RCRA Corrective Action Project (RCAP). We meet periodically with these groups, but we meet with other groups on a non-routine basis as well. Agenda items usually are set to reflect topics of interest to either their member companies or topics we wish to obtain input on. We will work with these groups to include financial assurance topics, as appropriate.

- **Web-Based Communication.**

***QuickPlace.*** In March 2006, OSW made the Financial Assurance QuickPlace available to interested EPA and State personnel. It is a self-service web tool that provides a secured accessible workplace for information internal to financial assurance program staff and managers (a list of contacts in each Region and State is available through QuickPlace).

We continue to update, promote and implement the Financial Assurance QuickPlace as an information sharing mechanism. This effort is ongoing.

We will also continue to solicit feedback from the workgroups described above with respect to how QuickPlace may be improved to be: (1) an effective place to centrally locate pertinent financial assurance documents; and (2) a communication exchange mechanism that can be used to share ideas, success stories, and tools; ask questions; and solicit feedback from other financial assurance experts.

***Financial Assurance Webpage and Web-based Toolkit.*** We will build on the QuickPlace notion by first developing a webpage, and later a more comprehensive web-based Toolkit, to facilitate public access to financial assurance information. EPA has used web-based toolkits in other areas as a successful means for sharing information in a variety of formats. Unlike the Financial Assurance QuickPlace described above, the Toolkit will be publicly available via a link from the OSW home page.

The contents of the webpage and Toolkit will be agreed upon by EPA and the States. Contents are likely to include, for example: pertinent

Federal Register notices regarding financial assurance; a general description of the financial assurance regulations; frequently asked questions (FAQs); relevant guidance documents and policy memos; and fact sheets on specific topics.

The webpage will be completed by the second quarter FY 2007. We will establish links to Toolkit contents on an ongoing basis as the items become available and solicit feedback from users in an effort to keep the site current and continuously improve its usefulness.

- Financial Assurance Topic Experts.

We are working collaboratively with the Regions and States to identify staff who are financial assurance experts on specific topics in their organizations, as well as EPA Headquarters and make their contact information available to program implementers. [Note: This expands upon the contact information that is currently available on the Financial Assurance QuickPlace by identifying expert contacts for specific topic areas.]

We will engage with the various workgroups previously discussed to identify priority topic areas and associated financial assurance experts (including cost estimating experts). We will provide contact information for the topic experts to program implementers.

The list of topic areas and associated financial assurance experts will be developed in FY 2007 and posted on the Financial Assurance QuickPlace.

B. Training.

- Financial Assurance Mechanisms.

EPA's Office of Enforcement and Compliance Assurance (OECA) developed a four-day training course on the financial assurance mechanisms. Since December 2003, this training has been offered five times at locations across the country. The training is continuing: a sixth session is currently scheduled for the second quarter of FY 2007, and a seventh session is scheduled for the fourth quarter of FY 2007. EPA will continue to conduct training on financial assurance mechanisms on an as-needed basis in balance with other financial assurance program needs.

- Cost Estimation.

EPA developed a training class on cost estimates for closure, post-closure and remediation. This class has been offered eight times across the country. We have learned through the Financial Assurance QuickPlace (described above) that additional offerings of this class should be provided. EPA will continue to provide the training in FY 2007.

We also provide hands-on training to Regional and State personnel. EPA HQ staff visited a Regional office in April 2006 to review cost estimates side-by-side with Regional staff. Through this experience, we learned that there may be a need to supplement the cost estimating class with one-on-one, "hands-on" assistance. EPA will continue to conduct "hands-on" training to additional Regions on an as-needed basis in balance with other financial assurance program needs.

C. Oversight/Assistance.

- Site Visits.

We will conduct Regional and/or State assistance visits to promote effective program implementation. These visits provide a valuable opportunity for direct communication between EPA HQ, Regional, and State management and staff. Agendas are collaboratively established so that all parties have an opportunity to raise key topics of specific interest or timely relevance.

As resources allow, we will conduct at least two visits per year beginning in FY 2007 that include financial assurance as an agenda topic.

- Review of Financial Assurance Submissions.

During the Training on Financial Assurance Mechanisms, some Regions and States emphasized the significant difficulties encountered in reviewing financial test and insurance submissions due to, for example, lack of adequate resources and the complexity of the information. This finding is supported by other information that has come to EPA (for example, in phone calls, informal discussions at various meetings, etc.).

In response, we plan to provide contractor support on a pilot basis to a limited number of Regions and States for review of financial assurance submissions in FY 2007. We will then evaluate the usefulness of this assistance, and, based on available resources and competing priorities, determine whether to continue providing contractor support.



D. RCRAInfo Enhancements.

- New Financial Assurance Module.

We will incorporate data on financial assurance mechanisms and coverage into RCRAInfo to promote more effective tracking of essential information and enable analyses of financial assurance data.

We have participated in a joint EPA/State WIN/Informed Program Area Analysis (PAA) process to develop functional specifications for the new Financial Assurance Module, and the recommended enhancements were approved by the WIN/Informed Executive Steering Committee in July 2005.

The new module will allow us to track data, such as type of financial assurance instrument, issuer, and the amount of assurance by obligation (closure, post-closure, corrective action).

We will continue to participate in the joint EPA/State Design Team to incorporate the approved recommendations into RCRAInfo. According to the schedule put forth by the WIN/Informed process, the new financial assurance module will be incorporated into RCRAInfo Version 4, which is scheduled to be released in the fourth quarter of FY 2008.

- Additional Enhancements to Promote Data Quality.

Through the Design Team process, we will continue to evaluate additional enhancements to promote data quality.

We will examine feasibility of including additional data elements or data links (including those suggested by OIG in their 2005 Report). Examples include: financial assurance provider links, company links, historical trend information, and cost estimate accuracy information.

We are in the process of developing a schedule for completing the analysis to consider additional data elements. When it is complete, we will submit the recommendations to the WIN/Informed Executive Steering Committee for their review and approval.

Based on the Executive Steering Committee's direction, we will work through the Design Team to incorporate any additional improvements into the RCRAInfo Version 4 release mentioned above.

- Monitor Data Quality.

We will monitor the ongoing use of the new financial assurance module (through periodic HQ auditing and use of annual reports) to ensure the database is being accurately populated and maintained. We will also work with the RCRAInfo user community via their routine conference calls and meetings to evaluate the need for additional data entry guidance (supplementing guidance provided in the PAA report) or reporting capabilities. [Note: This is a future activity since there needs to be sufficient time after RCRAInfo Version 4 is released for system users to identify needs based on actual experience.]